IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.611 OF 2005

Dhondiram Yashwant Patil
(since deceased through LR) & Ors...Petitioners.

Vs.

Special Land Acquisition
Officer & Ors. ..Respondents.

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Mrs.Prabhu U. Badadare for the Petitioner.

Mr.C.R.Sonawane, AGP for the State.

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CORAM : A.P.SHAH &

DR.D.Y.CHANDRACHUD, JJ.

9th June, 2005.

P.C. :

1. Yeshwant Patil, the predecessor-in- title of the Petitioners, had four sons viz. Dhondiram and the Second, Third and Fourth Petitioners. Dhondiram expired and is survived by the First Petitioner. Yeshwant Patil was the Karta of a Hindu Undivided Family which was possessed of

ancestral agricultural lands at village Bhadole, in the Taluka of Hatkanangale in District Kolhapur. According to the Petitioners, there was a partition between the coparceners of the Joint Hindu Family on 4th November, 1975 after which parties continued to cultivate the lands falling to their respective shares separately.

2. On 2nd November, 1978 a notification was issued by the State Government under Section 11 of the Maharashtra Resettlement of Project Affected Displaced Persons Act, 1976 by which the provisions of the Act were made available to the Warana project in Kolhapur district. The village of the Petitioners falls within the benefited zone of the project. Thereafter acquisition proceedings took place under the Land Acquisition Act, 1894 and it has been stated that a notice was issued in the name of deceased Yeshwant Patil on 2nd November, 1982 calling upon him to file his objections to the proposed acquisition. Following a notification under Section 4, a declaration was issued under Section 6 on 4th October, 1985. On 15th January, 1985, the Petitioners made an application to the Commissioner with a request that instead of the

acquisition of their lands from Gat No.2833 and Gat No.2787 as proposed, the Petitioners would be ready to surrender land equal to the land under acquisition from Gat No.2801. The case of the Petitioners was that Gat Nos.2833 and 2787 are fertile lands; the Petitioners had spent large sums of money for the irrigation of these lands and that there was a Samadhi of their father and mother and a temple situated therein. Moreover, it was stated that the Petitioners have a farm house in Gat No.2833, a well and a pipeline. According to the Petitioners, the Commissioner, Pune Division directed the Land Acquisition Officer on 10th December, 1985 to verify the request made by the Petitioners. It is the case of the Petitioners that the Commissioner by a letter dated 5th January, 1988 called upon the First Respondent, the Special Land Acquisition Officer to accept the alternative land. The Petitioners have stated that the land in Gat No.2801 is also of a good quality from which crops such as gram and jawar have been cultivated.

3. Since the First Respondent had not taken any action on the request of the Petitioners, they

moved this Court in Writ Petition 400 of 1988. The Petition was dismissed by an order dated 15th October, 1996. Thereupon the Petitioners moved the Supreme Court in Special Leave Petition (Civil) 2518 of 1997 in which it has been stated, the Supreme Court granted leave to appeal. By a common judgment and order dated 1st December, 1998 delivered in a batch of matters, the Supreme Court directed the Commissioner, Pune Division to decide all the matters afresh. Status quo was directed to be continued for a period of four weeks from the date of service of the orders passed by the Commissioner. The Commissioner thereupon passed the impugned judgment and order dated 16th November, 2004.

4. On 24th December, 2004 a proposal has been made by the Petitioners for surrendering alternate land from Gat No.1216, admeasuring 68 Ares and from Gat No.2787 admeasuring 53 Ares as per the revised slab of 1 Hectare 21 Ares. In the affidavit that has been filed on behalf of the Respondents in these proceedings, it has been stated that the Commissioner has by his order dated 16th November, 2004 directed the Special Land Acquisition Officer,

Kolhapur to acquire 1 Hectare and 15 Ares out of Gat No.2833 and 6 Ares out of Gat No.2787 and to exclude 81 Ares out of Gat No.2787 from acquisition. The limited grievance which has been urged before us in these proceedings is that though the Petitioners have moved an application for surrendering an equivalent area of land as far back as on 24th December, 2004, no action has been taken thereupon. We do not see any reason why the request made by the Petitioners should not be considered and, if found to be in accordance with law be accepted upon due verification. In these circumstances, we dispose of this Petition by directing the Respondents to consider the application dated 24th December, 2004 of the Petitioners and to allow the request of the Petitioners for the surrender of the alternative lands as stated therein, subject to due verification in accordance with law. The Petition is accordingly disposed of in these terms. There shall be no order as to costs.